

Date: November 5, 1999

To: John Spotila, Administrator, Office of Information and Regulatory Affairs,OMB

From: Jere Glover, Chief Counsel for Advocacy, SBA

Subject: Class V UIC Wells – Draft Final Rule Comments

As this involves the review of a rule that underwent the SBREFA panel process, my office has a particularly heightened interest in this rule. EPA's own analysis of its draft rule has triggered a full regulatory flexibility analysis because it estimates annual economic impacts of over 3% costs/sales for approximately one thousand small business owners of motor vehicle maintenance facilities. This is among the very highest small business impacts that we ever have observed in the review of an EPA regulation. Thus, we need to take a second look to be sure that this level of protection cannot be obtained at less cost.

Initially, we should restate what we observed in the 1997 panel report. The agency is still unable to establish that the automotive wells are truly "high risk" and warrant additional regulation. Despite substantial research performed about the fate and transport indicating significant dilution and attenuation of motor vehicle wastes as it leaves the well, EPA fails to perform any work modeling the actual levels of contamination that would reach ground water sources. Despite the agency's extensive efforts to uncover recent cases of ground water contamination from these sources, it is unable to cite more than a handful of cases, although there have been tens of thousands of motor vehicle wells nationwide operating over decades. As DOE points out, there is no information presented that indicates that states are unable to protect their own ground water through their own requirements.

We have two primary solutions to addressing this issue: (1) regulate only facilities within the narrower source water protection areas, instead of the broader "sensitive areas," which could default to the entire state (see DOE's comments), and (2) allow states to issue general permits, not merely individual permits for motor vehicle wells. This would reduce the number of covered facilities and allow states to streamline the availability of permits to facilities that can show that their discharges will not endanger the ground water.

A general permit is critically needed to reduce these overwhelming small business costs and provide an environmentally sound solution. The agency's own regulatory analysis estimates that virtually every facility could produce injectate meeting even the very conservative Maximum Contaminant Level (MCL) requirements simply through compliance with best management practices (BMPs). Under those circumstances, it is entirely appropriate for a general permit, specifying those BMPs, and a monitoring regime to ensure compliance with those BMPs address the situation. The general permit is less costly than the individual site-specific permits for both the states and the affected

small firms. States would maintain the option of requiring an individual permit application.

Many states have significant ground water protection programs and continue to regulate these wells to protect the environment; many states have restated their interest in maintaining their programs. EPA has not explained why it must substitute its judgment for the states which have the responsibility to protect their own ground water and are closest in proximity to the regulated facilities. Without the ability to issue general permits, states such as Mississippi would not have adequate resources to issue individual permits, and may force them into banning such wells altogether. With the minimum requirements of BMPs, monitoring and some environmental benchmark (MCL, or a multiple of an MCL-based on a site-specific showing), EPA would have added a very significant level of environmental protection, possibly more than can be justified by the facts in the record, and at a lower cost.

In addition, we believe strongly that EPA should extend the deadlines for the completion of the state plans delineating the sensitive areas. Small businesses statewide would be automatically subject to these requirements if the state fails to complete these plans in time. Lastly, we ask OMB to address the other issues designated in the 10/29 Advocacy staff memorandum.